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March 13, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

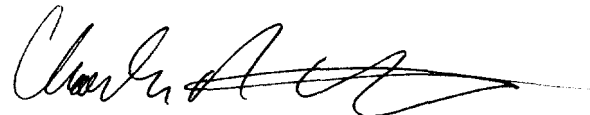
Re: MM Docket No. 97-122; File Nos. BRFT-970129YC, BRFT-970129YD

Dear Ms. Salas:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and six copies of his Proposed Findings of Fact and Conclusions of Gerard A. Turro in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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MAR 13 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re)
)
GERARD A. TURRO)
)
For Renewal of License)
For FM Translator Stations)
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the)
Construction Permit for FM Radio)
Station WJUX(FM), Monticello, NY,)
Should Not Be Revoked)

MM Docket No. 97-122

File Nos. BRFT-970129YC
BRFT-970129YD

To: Honorable Arthur I. Steinberg
Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF GERARD A. TURRO**

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March 13, 1998

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SUMMARY

The Commission designated Mr. Turro's applications for renewal of license of two FM translators for a hearing to determine if he illegally supplied programming to them through some means other than off the air reception, whether he misrepresented the facts or lacked candor to the Commission in connection with those translator stations' operations, and whether he took illegal *de facto* control of radio station WJUX(FM), Monticello, New York by making Jukebox Radio programming available to it under a Network Affiliation Agreement.

The record developed, which included the two week hearing, makes it overwhelmingly clear that Mr. Turro was in compliance with all relevant Commission Rules at all times. All credible testimony establishes that the translators received Jukebox Radio programming via off the air reception, or "directly through space," as the Commission's Rules require. The testimony of Mr. Turro, independent consulting engineers Herman E. Hurst and John Hidle, employees of Jukebox Radio, and significantly, the FCC's own field engineer, establish beyond question that the translators could and did receive Jukebox Radio programming by off the air reception. The fragmentary opposing evidence rests upon a wholly theoretical, statistical study of no direct probative value and testimony from witnesses with no personal knowledge of the translators and who have substantial credibility failings.

Because Mr. Turro informed the Commission of the facts of these lawful translator operations at every juncture, there is no basis to the misrepresentation or candor allegations.

Mr. Turro never took control of the Monticello station. The record is crystal clear that he entered into the Network Affiliation Agreement to provide Jukebox Radio programming to the station in reasonable conformance with a prior declaratory ruling of the Mass Media Bureau

which approved the substance of the arrangement. At no time did Mr. Turro exercise operational or financial control over the Monticello station, at all times the licensee of the Monticello station had the right to reject Jukebox Radio programming, and it retained all of its licensee rights, duties and obligations.

Therefore, all findings and conclusions, whether in connection with credibility or substance, should be in favor of Mr. Turro. The applications for the renewal of the licenses of the two FM translators should be renewed unconditionally for full license terms.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re) Koteen & Naftalin, L.L.P. Draft March 12, 1998
)
GERARD A. TURRO) MM Docket No. 97-122
)
For Renewal of License) File Nos. BRFT-970129YC
For FM Translator Stations) BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the)
Construction Permit for FM Radio)
Station WJUX(FM), Monticello, NY,)
Should Not Be Revoked)
To: Honorable Arthur I. Steinberg	
Administrative Law Judge	

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF GERARD A. TURRO**

Gerard A. Turro, submits herewith, by his attorneys, his Proposed Findings of Fact and Conclusions in the above-captioned proceeding.¹ These proceedings were held pursuant to

¹Throughout these proposed findings and conclusions, and consistent with the terminology used previously in this case, we will use the following abbreviations: Mass Media Bureau ("Bureau"), Universal Broadcasting of New York, Inc., the licensee of WVNJ(AM), Oakland, New Jersey ("Universal"), Monticello Mountaintop Broadcasting, Inc. ("MMBI"), the licensee of WJUX(FM), Monticello, New York (formerly holding the call sign of WXTM) (the "Monticello station"), FM Translator Station W276AQ, Fort Lee, New Jersey, licensed to Gerard A. Turro (the "Fort Lee translator"), Intercity Microwave Relay Station WMG-499, formerly licensed to Gerard A. Turro in association with the Fort Lee translator, now defunct ("WMG-499"), the studios of Jukebox Radio located at 75 2nd Street, Dumont, Bergen County, New Jersey (the "Dumont studio") and FM Translator Station W232AL, Pomona, New York, licensed to Gerard A. Turro (the "Pomona translator"). In addition, the following abbreviations are used for reference: Cohen, Dippell and Everist, P.C. ("CDE"), Bureau and Universal joint exhibits

Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, FCC 97-137, 12 FCC Rcd 6264 (released April 18, 1997) ("HDO").

I INTRODUCTION AND PROCEDURAL MATTERS

A Attempt to obtain local origination authority for the Fort Lee translator

1. Over the course of a number of years, Mr. Turro sought authority from the Commission to be able to originate programming from the Fort Lee translator. None of those requests was successful. (TR 1780-1781; see also MMB1, pp. 1-2)

B 1991 Mass Media Bureau Declaratory Ruling

2. Mr. Turro sought from the Commission a ruling that he could provide programming to a commercial FM station which then would be rebroadcast from FM translators licensed to him:

By letter dated January 30, 1991 (MMB1, p. 6), I asked the FCC for an informal declaratory ruling that it would be permissible for a commercial FM translator licensee to purchase broadcast time on the primary FM station that originates the programming rebroadcast by the translator. I specifically asked for such a ruling given the following conditions:

- (1) The translator would be operating outside of the originating station's primary contour.
- (2) The primary station would not reimburse the translator licensee for air-time pursuant to the Commission's Rules. At no time would the primary station be financially supporting the translator licensee.
- (3) Any air time purchased on the primary station by the translator licensee would abide by the Commission's Rules regarding purchase of brokered air time.
- (4) Advertising may be sold for broadcast during such brokered air time to support this programming. (T1, pp.2-3)

("MMB_"), MMBI exhibits ("MMBI_"), Mr. Turro's exhibits ("T_"), transcript ("TR"), proposed findings ("PF") and conclusions ("C").

3. In response to Mr. Turro's January 30, 1991 request for a declaratory ruling, the Commission's Chief of the Mass Media Bureau issued a declaratory ruling by a letter dated November 19, 1991. (MMB1, pp. 8-9)

C October 1994 arrangement with MMBI

4. Subsequent to receiving the November 19, 1991 letter from the Chief of the Mass Media Bureau, Mr. Turro "started looking for opportunities to form such an arrangement to bring FM programming to Bergen County." (T1, p. 3) Sometime in 1994, Mr. Turro received a telephone call from Larry Fishman, who held a permit to build a new FM station to serve Monticello, New York. Mr. Fishman, who had never talked to Mr. Turro before, asked a number of questions about how to start up a new FM station. At some point, Mr. Fishman came into contact with Wesley Weis, with whom Mr. Turro had had a number of contacts, both business and personal, over many years. Mr. Weis eventually entered into an agreement with Mr. Fishman to acquire the construction permit, and eventually he did acquire it. (T1, pp. 3-4; TR 1727-1730)

5. Mr. Turro and Mr. Weis discussed an arrangement between Jukebox Radio and MMBI which would be consistent with the terms of the November 19, 1991 letter from the Chief of the Mass Media Bureau and permissible under the Commission's Rules. They agreed that Jukebox Radio would pay Mr. Weis' corporation, MMBI, monthly payments in return for which MMBI would make air time on the Monticello station available to Jukebox Radio, that Jukebox Radio would provide programming to the Monticello station, subject to the Network Affiliation Agreement (MMB8, pp. 137-142) and that the Monticello station's signal would be rebroadcast by the Fort Lee and Pomona translators. (T1, p. 4; TR 1731-1732)

6. On October 22, 1994, MMBI acquired the construction permit from Mr. Fishman. (MMB23, p. 469 and MMB24, p. 555) A few days later, MMBI constructed the Monticello station and filed its application for a broadcast station license. (MMB2, pp. 38-44)

D Universal Complaint

7. By its counsel, Universal filed a complaint on February 15, 1995 directed to Norman Goldstein of the Mass Media Bureau. (MMB2) Universal's complaint alleged, *inter alia*, that Jukebox Radio provided its programming to the Fort Lee translator illegally by sending it directly from the Dumont studio to the translator over WMG-499, which itself would have been an illegal use of that microwave station.

8. The complaint included, and was supported by, an engineering report dated February 10, 1995 prepared for Universal by the consulting engineering firm of Cohen, Dippell and Everist, P.C. ("CDE") which was based upon sworn statements of three CDE engineers. (MMB2, pp. 49-64) In that report, the CDE engineers stated that they had investigated Mr. Turro's operations on February 2, 1995, and had established that Jukebox Radio programming was being provided directly from its Dumont studio to the Fort Lee translator on a full time basis in violation of Sections 74.531 and 74.1231(b) of the Commission's Rules (MMB2, p. 54); that the Jukebox Radio programming was "fully oriented" to the area of Bergen County, providing the appearance that the translator was a full service FM station, in violation of Commission policy (MMB2, pp. 54-55); that the Pomona translator simultaneously carried the Jukebox Radio service so that it, too, was in violation of the same Commission rules and policies as the Fort Lee translator; and that based upon testing from a building in Fort Lee near the translator, as a technical matter the Fort Lee translator could not be receiving the signal of the Monticello station

off-the-air, as had been represented to the Commission by Mr. Turro, because of interference from WBAI, New York, New York, which transmitted on 99.5 MHz, a first adjacent channel to the Monticello station on 99.7 MHz. (MMB2, pp. 58-59) The CDE engineers also stated that the high aural quality of the Pomona translator indicated that it, too, was not receiving its signal off-the-air from the Monticello station and, instead, was either retransmitting the Fort Lee translator's signal or was receiving a direct program feed. (MMB2, pp. 58-59)

E FCC investigations in April and May 1995

9. As a consequence of the receipt the Universal complaint, the Commission ordered an investigation of the Monticello station and the Fort Lee and Pomona translators. FCC field engineer Serge Loginow, Jr. was provided with a copy of Universal's complaint (MMB3; T25, p. 3) and subsequently inspected the Monticello station on April 13, 1995 (T25, pp. 3-6; MMB4); conducted tests of the Fort Lee and Pomona translators and inspected the Dumont studio on April 14, 1995 (T25, pp., 6-7; MMB4); and conducted further tests of the Fort Lee translator on May 15, 1995. (T25, pp. 7-8; MMB4; see also TR 336)

F June 1995 Letter of Inquiry

10. Based upon the Universal complaint and Mr. Loginow's inspections, Mr. Goldstein of the Bureau issued separate letters to Mr. Turro (MMB7) and to MMBI (MMB10), both dated June 21, 1995.

11. Mr. Turro's July 27, 1995 response was submitted to the Commission on July 28, 1995. (MMB8) That response included an engineering statement from Herman E. Hurst, Jr. (MMB8, pp. 125-131) Mr. Hurst stated that he had personally inspected the Dumont studio, the Fort Lee and Pomona translators, and had visited the Monticello station, on July 6, 1995, as part

of his efforts to prepare his statement.² (T1, p. 25; TR 1869)

G FCC investigations in July and August, 1995 and June 1997

12. On July 31, 1995, Mr. Loginow returned to Bergen County and monitored the Fort Lee translator. (T21, p. 4; T25, p. 8) On August 2, 1995, Mr. Loginow, with Mr. Turro's full cooperation (T27, p. 3) inspected the facilities of the Fort Lee and Pomona translators and conducted tests of them. (T21, p. 5; T25, pp. 8-9) On June 4, 1997, Mr. Loginow again performed tests of the Fort Lee translator. (T25, pp. 9-10)

H 1996 Orders calling for divestiture

13. By letter dated April 5, 1996, the Chief of the Mass Media Bureau stated that any authority for Mr. Turro and MMBI to operate under their Network Affiliation Agreement was rescinded, and accordingly, directed that Mr. Turro either relinquish his ownership in the Fort Lee and Pomona FM translators or terminate any connection with the Monticello station, including provision of programming under the Network Affiliation Agreement. Mr. Turro and MMBI were given 60 days to comply. (MMB1, pp. 11-13)

14. In Memorandum Opinion and Order, DA 96-1292 (released August 13, 1996), the Chief of the Mass Media Bureau concluded that an application submitted by Mr. Turro proposing

²The letter of inquiry stated that: "The Commission recently received information that raises serious questions concerning the operation of Translator Stations W276AQ, Ft. Lee, NJ, W232AL, Pomona, NY and Aural Inter City Relay Station WMG-499, Dumont, NJ." (MMB7, p. 110) It does not mention, or otherwise refer to, the Universal complaint. The parties dispute when Mr. Turro was provided notice of the Universal complaint. Mr. Turro agrees that his counsel obtained a copy of it sometime during the summer of 1995 but he was not officially provided a copy of it until discovery took place in connection with the HDO during 1997. The Bureau contends that Mr. Turro was on notice earlier than that. It is undisputed that Universal requested that its complaint be kept confidential and that the Bureau honored that request for a considerable period of time.

to assign the licenses of the Fort Lee and Pomona translators to a trust under which he would retain a beneficial interest would not comply with the directives of the April 5, 1996 letter. (MMB1, pp. 15-19)

15. By application filed on September 6, 1996, and subsequently resubmitted on September 12, 1996, Mr. Turro proposed to assign the licenses of the Fort Lee and Pomona translators to Press Broadcasting Company, Inc. Under the HDO, the Commission held processing of that application in abeyance pending the outcome of this proceeding. (HDO, para. 23)

I Hearing Designation Order

16. The issues in the case are recited in: Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, FCC 97-137, 12 FCC Rcd 6264 (released April 18, 1997) (“HDO”).

17. In the HDO (para. 21), the Commission designated the following issues against Mr. Turro:

To determine whether Mr. Turro’s operation of the Fort Lee and Pomona translators violated Sections 74.531(c) and 74.1231(b) of the Commission’s Rules with respect to the operation of translator stations;

To determine whether Mr. Turro engaged in an unauthorized transfer of control over the Monticello station in violation of Section 310(d) of the Communications Act and Section 73.3540(a) of the Commission’s Rules;

To determine whether Mr. Turro misrepresented and/or lacked candor to the Commission concerning the operation of the Fort Lee and Pomona translators; and

To determine whether, in light of the evidence adduced under the foregoing issues, the public interest will be served by the grant of Mr. Turro's renewal applications for the Fort Lee and Pomona translators.

J Chronology of Case

18. Administrative Law Judge Arthur I. Steinberg was appointed as Presiding Judge. Order, FCC 97M-71 (released April 29, 1997).

19. The Presiding Judge established a procedural schedule. Order, FCC 97M-90 (released May 22, 1997).

20. The Presiding Judge denied a Motion to Enlarge Issues, and a supplement thereto, filed by Universal, which had been opposed by Mr. Turro and the Bureau. Memorandum Opinion and Order, FCC 97M-106 (released June 19, 1997).

21. At the request of Mr. Turro, which was opposed by the Bureau, the Presiding Judge issued a finding in support of taking the oral deposition of FCC field engineer Serge Loginow, Jr. Memorandum Opinion and Order, FCC 97M-112 (released June 23, 1997)

22. The Presiding Judge denied a motion for relevancy determination filed by the Bureau, and opposed by Mr. Turro. Memorandum Opinion and Order, FCC 97M-121 (released July 11, 1997).

23. The Presiding Judge ordered that the deposition upon oral examination of Miriam Warshaw and Howard Warshaw be taken, at the request of MMBI, which was opposed by Universal. Memorandum Opinion and Order, FCC 97M-127 (released July 21, 1997).

24. The Presiding Judge denied the joint motion to compel filed by the Bureau and Universal, which had been opposed by Mr. Turro. Memorandum Opinion and Order, FCC 97-

130 (released July 25, 1997).

25. The Presiding Judge accepted the requests to the Mass Media Bureau for admissions of fact and genuineness of documents of Mr. Turro and MMBI, and denied the Bureau's consolidated motion to strike them. Memorandum Opinion and Order, FCC 97-143 (released August 27, 1997).

26. The Presiding Judge granted in part and denied in part Mr. Turro's motion to compel and for related relief to the extent reflected on the record during the prehearing conference held on October 8, 1997. Order, FCC 97M-168 (released October 14, 1997).

27. The Presiding Judge dismissed Mr. Turro's motion to strike. Order, FCC 97M-187 (released November 10, 1997).

28. The Commission granted Mr. Turro's petition for special authority to take the oral deposition of Serge Loginow, Jr. Memorandum Opinion and Order, FCC 97-395 (released November 18, 1997).

1) Dates of prehearing conferences

29. The first prehearing conference was held May 20, 1997.

30. The second prehearing conference was held September 3, 1997.

31. The third prehearing conference was held October 8, 1997.

32. The admissions session was held on November 23, 1997.

2) Hearing dates and dates the record was opened and closed

33. The hearing commenced on December 2, 1997.

34. The hearing ended and the record was closed on December 12, 1997. See Order, FCC 97M-206 (released December 16, 1997)

35. The record was reopened for the limited purpose of identifying and receiving into evidence, pursuant to Mr. Turro's unopposed motion, Turro Exhibits 38, 39 and 40, and then the record was closed. Order, FCC 98M-1 (released January 12, 1998)

K Dramatis Personae

36. Gerard A. Turro is the licensee and sole owner of FM translator stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York. Mr. Turro is the sole shareholder of FM 103.1, Inc., which is a for-profit corporation which produces radio music programming under a format called, and doing business as, "Jukebox Radio." (T1, p.1) Mr. Turro founded and developed Jukebox Radio which has its studio located at 75 2nd Street, Dumont in Bergen County, New Jersey (the "Dumont studio"). Mr. Turro is a life-long resident of Bergen County and its vicinity. For approximately 24 years, Mr. Turro has been a chief engineer or operator of radio stations in the New York metropolitan area, holding such a position in thirteen different radio stations. He is skilled and experienced in the technical aspects of radio broadcasting. (T1, p. 2) Mr. Turro was a party and a witness.

37. Wesley Weis has been involved in business in the radio industry for many years, including communications equipment sales, tower and antenna erection, sales and service, and antenna site management. He is the sole shareholder of MMBI, the licensee of the Monticello station. Mr. Weis was a party and a witness. (MMBI1, p. 1)

38. Serge Loginow, Jr. is an FCC field engineer who has been stationed at the FCC's field office in New York for many years. He conducted all of the investigations on behalf of the Commission disclosed to the parties in this proceeding and the Bureau stated that he is the field engineer referred to in the HDO. (MMB16, pp. 250-251) Mr. Loginow testified on behalf of

the Bureau and Universal.

39. Howard Warshaw is a shareholder of Universal, and along with his wife, controls Universal and WVNJ. (TR 1043-1044) Mr. Warshaw was the party-representative of Universal in this proceeding. Mr. Warshaw was called as a witness by Mr. Turro.

40. Vincent D. Luna was an employee of Jukebox Radio when it entered into its programming arrangement with MMBI and when the Fort Lee translator started to retransmit the signal of the Monticello station in late October 1994. Mr. Luna left Jukebox Radio approximately in May or early June 1995, and became an employee of Universal at WVNJ approximately in early August 1995. (MMB14, p. 229; TR 734; TR 752; TR 773) He appeared as a witness on behalf of Universal and the Bureau and was an employee of Universal at the time of the hearing.

41. William Gaghan was an employee of Jukebox Radio when it entered into its programming arrangement with MMBI and when the fort Lee translator started to retransmit the signal of the Monticello station in late October 1994. Mr. Gaghan left Jukebox Radio in May 1995, and became an employee of Universal at WVNJ in June 1995. (MMB15, p. 240; TR 1091-1092) He appeared as a witness on behalf of Universal and the Bureau and was an employee of Universal at the time of the hearing.

42. Paul Einreinhofer is a sergeant and County Communications Officer of the Bergen County Police, Bergen County, New Jersey, and the 9-1-1 Coordinator, and in that capacity, directs the operations of the Bergen County Office of Emergency Management. (T3, p. 1) Mr. Einreinhofer appeared as a witness on behalf of Mr. Turro.

43. William H. Owen was an on-air radio personality for the American Broadcasting

Company ("ABC") for approximately thirty years. Sometime after retiring from ABC, Mr. Owen took employment at Jukebox Radio from 1994 to 1996, was then employed by Universal at WVNJ from February, 1996 to August, 1997, and then was employed again at Jukebox Radio from August 1997 through the time of the hearing. (T4, p. 1) Mr. Owen appeared as a witness for Mr. Turro.

44. David Charles Lynch has been employed at Jukebox Radio as an on-air personality from July 4, 1995 through the time of the hearing. (T5, p.1; TR 1262) Mr. Lynch appeared on behalf of Mr. Turro.

45. Chuck Garland has been employed at Jukebox Radio as an on-air personality from September, 1994 through the time of the hearing. (T6) Mr. Garland appeared on behalf of Mr. Turro.

46. Herman E. Hurst, Jr. has more than thirty-five years of experience in the field of broadcast and communications systems engineering, having provided engineering services to more than one thousand broadcast stations and having personally inspected more than one hundred broadcast stations. Mr. Hurst is the Principal Engineer for Carl T. Jones Corporation and has been Mr. Turro's consulting engineer since approximately 1984. (T2, Attachment A; TR 1884) Mr. Hurst appeared on behalf of Mr. Turro.

47. John E. Hidle has more than twenty-five years of experience in communications, electronics, and systems analysis, design and implementation. Mr. Hidle is a Registered Professional Engineer and is a Senior Consulting Engineer with Carl T. Jones Corporation. (T7, pp. 8-12) Mr. Hidle appeared on behalf of Mr. Turro.

48. Jules Cohen is a consulting engineer and a Registered Professional Engineer.

(MMB5, p. 88) Mr. Cohen appeared on behalf of Universal and the Bureau.

49. Wilson A. La Follette is an electrical engineer with Cohen, Dippell and Everist, P.C. and had approximately twenty-nine years of experience with the Federal Communications Commission. (MMB6, p. 93) Mr. La Follette appeared on behalf of Universal and the Bureau.

50. Eugene Blabey is a principal of radio stations WVOS(AM) and FM, Liberty, New York, and on a consulting basis, is the General Manager for the Monticello station, being so employed by MMBI. (MMBI6, p. 2) Mr. Blabey appeared at the hearing pursuant to a subpoena sought by Universal and the Bureau.

51. Carol Montana is the Business Manager for WVOS(AM) and FM, and is employed by MMBI as the Public Affairs Director for the Monticello station. (TR 816; 822) Ms. Montana appeared at the hearing pursuant to a subpoena sought by of Universal and the Bureau.

52. George Spicka was an engineer retained by Mr. Blabey to man the Monticello station transmitter in April 1995 to assist Mr. Loginow's investigations. (TR 939) Mr. Spicka did not testify at the hearing.

II JUKEBOX RADIO

A Programming

53. Commencing in late October, 1994,³ Jukebox Radio provided programming to the Monticello station, transmitting on 99.7 MHz, and the Fort Lee translator provided that programming in Bergen County on its authorized frequency of 103.1 MHz by retransmitting the

³The circumstances of Jukebox Radio prior to its arrangement with MMBI were held to be beyond the scope this proceeding. Memorandum Opinion and Order, 97M-121 (released July 11, 1997).

signal of the Monticello station. (T1, p. 6) The Jukebox Radio service was founded and developed by Mr. Turro. It generally offered music programming of the 1940s and 1950s along with news, weather and public service programming. (T1, p. 1) The Jukebox Radio service is commercial, selling advertising generally in Bergen County and in Sullivan County to local, regional and national advertisers. (T1, p. 6; TR 2103-2105)

54. The Dumont studio of Jukebox Radio is located in Bergen County and commencing in approximately January of 1995, Jukebox Radio has maintained a salesperson in Sullivan County to sell advertising on the Jukebox Radio Network there, and such advertising has been sold. (TR 2102-2103)

55. Mr. Turro estimated that a rolling average of Jukebox Radio advertising buys for the two years previous to the hearing would be that about 45% of buys come from Bergen County businesses, about 10% of buys come from Sullivan County businesses, and about 45% of buys come from regional or national advertisers with interests in selling to both Bergen and Sullivan County residents. (TR 2103-2104) Mr. Turro gave automobile manufacturers, banks and Broadway shows as examples of such regional or national advertising buyers of Jukebox Radio. (TR 2105)

56. Mr. Turro also stated that the bulk of Jukebox Radio programming is devoted to music of a significant appeal to residents of both Bergen and Sullivan Counties. (T1, p. 29) Mr. Turro testified that:

It is important to me that Jukebox Radio make a substantial contribution to the public interest. We air news and weather several times a day, and make sure that such programming is helpful to the residents of Sullivan County and Bergen County. We have made sure that we get local weather and temperature reports from each county several times a day and we put them on the air promptly. We regularly air programming which

addresses issues of public importance to both Sullivan County and Bergen County residents on a regular basis, and we regularly carry timely information about weather problems, road conditions and school closures for both counties. Much of our issue responsive programming for Sullivan County is suggested by Carol Montana, Mr. Weis' employee, at the Monticello station studio. Our programming routinely includes a half hour public affairs program each week which is produced in and for Sullivan County in the studios of WVOS and aired by Jukebox Radio, along with other materials relevant to local issues in Sullivan County, in Bergen County, or both. We have produced many live, remote broadcasts, including a number of them from locations in Sullivan County. While a majority of our advertising comes from businesses situated in Bergen County, Jukebox Radio definitely carries advertisements for businesses seeking customers in Sullivan County. The bulk of our programming is devoted to music which is of significant appeal to residents of both counties. (T1, p. 29)

B The physical arrangements

1) Connections to the Monticello station

57. Jukebox Radio maintains its studio in a small building in Dumont, New Jersey leased from Mr. Weis. That studio includes offices, an on-air studio, and facilities devoted to program production. (See T1, p. 8, pp. 8-9; T5, pp. 1-2; TR 1639-1640; T7, p. 2) Initially, Mr. Turro leased a 56 Kbps landline from the telephone company to carry the Jukebox Radio programming feed from the Dumont studio to the Monticello station. About ten months later, he established a second such line to the Monticello station as a backup in case the first line was interrupted because he had experienced service outages due to failures of the landline. (T1, p. 8) Mr. Turro personally installed the network equipment at the Monticello station which connected the 56 Kbps landline to the station so that it could carry the Jukebox Radio program feed. (T1, p. 6)

58. Shortly after Jukebox Radio initiated regular commercial operations in early 1995, the FCC granted its authority for Mr. Weis to relinquish his ownership in the Pomona translator and Mr. Turro became the sole owner (MMB23, p. 471 and MMB24, p. 555). Shortly thereafter, the Pomona translator also started to rebroadcast the signal of the Monticello station on 94.3

MHz. (T1, p. 8)

59. With few exceptions, programming is originated in the Dumont studio. It is transmitted live, or taped, through the landlines to the Monticello station main studio or to its transmitter. There, network equipment processes the programming feed, and the programming is broadcast by the Monticello station on its authorized frequency of 99.7 MHz. The broadcast from the Monticello station may be received directly off the air, (“directly through space”) by either the Fort Lee or the Pomona translator, processed and retransmitted by both of them. (T1, p. 8)

2) TC-8 Remote control units

a) General use and operation of TC-8 remote control units

60. TC-8 remote control systems allow remote control and monitoring of broadcast transmission facilities from a studio or other locations. (T28, p. 5) The TC-8 system consists of two units, one located at the transmitter site and the other at the studio location. (*Ibid.*) A TC-8 remote control system allows for telemetry (data) between the units to provide information in a studio in the form of eight different status lights and eight different channels, along with “raise and lower” switches to control remotely such items as transmitters and antenna switches, and a five digit dot-matrix array to show channel selected and analog values associated with that particular channel. (T28, pp. 5-6) The link between the studio and transmitter TC-8 units may be by either wire or radio connection, and typically the radio links are across STL subcarriers for the studio-to-transmitter path and an FM subcarrier for the return path from the transmitter to the